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(39328)

IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted] 62

JACK R. GOLDBERG, Commissioner of Social Services of the City of New York,

Appellant,

against

JOHN KELLY, RUBY SHEAFE, TERESA NEGRON, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

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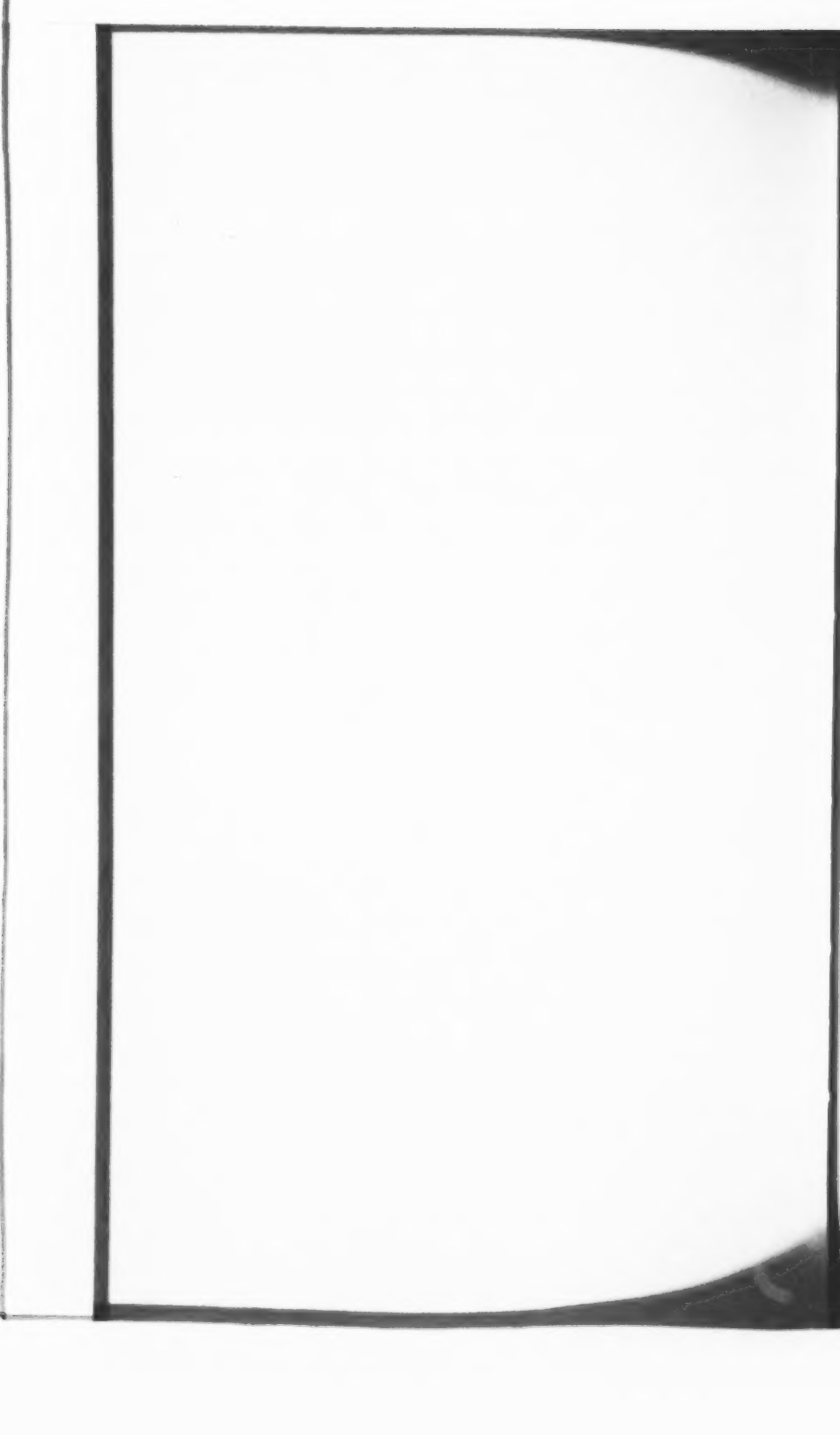

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. .....

JACK R. GOLDBERG, Commissioner of Social Services of the City of New York,

Appellant,

against

JOHN KELLY, RUBY SHEAFE, TERESA NEGRON, *et al.*,

Appellees.

JURISDICTIONAL STATEMENT

Appellant appeals from an order of the United States District Court for the Southern District of New York granting appellees' motion for a preliminary injunction staying all proceedings under 18 Codes Rules and Regulations of the State of New York 351.26(b), relating to the termination of benefits to persons receiving public assistance and denying appellant's motion for a summary judgment dismissing the complaints in these consolidated actions.

Appellant submits this Statement to show that the Supreme Court has jurisdiction of this appeal and that the appeal presents a substantial question for determination by this Court.

Opinion Below

The opinion of the District Court is unreported. It is set out in the Appendix to this Jurisdictional Statement as Appendix B.

Jurisdiction

This appeal is taken pursuant to title 28 of the United States Code, Section 1253.

In their complaints, appellees, who are welfare recipients in New York City, sought the convening of a three-judge court and declaratory and injunctive relief under the Civil Rights Act, Title 42 United States Code, Section 1983 and the Social Security Act, Title 42 United States Code, Section 301 *et seq.* A three judge court was convened pursuant to Title 28 United States Code, Sections 2281 and 2284. Thereafter, on November 26, 1968 the three judge court issued its decision granting appellees' motion for a preliminary injunction and denying appellant's motion for a summary judgment. The order appealed from was issued on December 13, 1968. The text of this order is set forth as Appendix A, below. Appellant's notice of appeal to this Court was filed in the Southern District of New York on January 6, 1969.

Regulation Involved

Title 18 N. Y. C. R. R., Section 351.26, is the regulation involved on this appeal. The text thereof is set forth as Appendix C, below.

Question Presented

Does a regulation which

1. requires seven days' notice to beneficiaries of public assistance of an intent to terminate benefits,

2. provides that the reasons for the proposed termination be set forth in the notice,

3. affords beneficiaries an opportunity to obtain a review of the proposed action and to submit any written statement or other evidence to demonstrate why this grant should not be terminated,

4. mandates that the reviewing officer be a person in a superior position to the supervisor who approved the proposed termination, and

5. continues public assistance until the review is completed

comply with due process of law particularly in light of the facts that (a) a subsequent fair hearing is available to review any errors that may occur and (b) any benefits improperly withheld will be restored?

Statement of the Case

This action was brought by appellees, who are recipients of public assistance, for a declaratory judgment and for an injunction. They sought a declaration that the regulation (New York State Department of Social Services, Regulation 351.26) governing the termination of public assistance, provided pursuant to Title 42 of the United States Code and the Social Welfare Law of New York, is unconstitutional in that it violates the Fourteenth Amendment to the United States Constitution and is otherwise unlawful in that it violates the Social Security Act. Specifically, appellees asserted that the regulation fails to provide for adequate notice and an opportunity for a hearing which satisfies standards of due process of law prior to termination or suspension of public assistance.

They also sought and the court below granted an injunction restraining defendants from terminating or suspending public assistance prior to a hearing of a type

which the appellees regarded as necessary to meet standards of due process of law. Appellees claimed that they and persons similarly situated have been or may be unconstitutionally deprived of public assistance under the procedures challenged.

The applicable regulation (Section 351.26) of the New York State Department of Social Services was amended after this action was commenced but prior to the convening of the three judge court. The present regulation is set forth in full as Exhibit "A" to the affidavit of defendant Jack R. Goldberg sworn to on May 8, 1968, and also appears as Appendix C, below.

Under the State regulation, the Commissioner of Social Services of New York City had the option of following a State procedure for termination of benefits (§351.26 [a]) or adopting local procedures which comply with the standards of §351.26 (b). Defendant Goldberg elected to proceed under §351.26 (b), and he presented a plan under that section which was approved. The local procedure as first proposed is annexed as Exhibit "B" to Commissioner Goldberg's affidavit of May 8, 1968. Subsequently, on May 21, 1968, the local procedures were modified and on May 27, 1968 became operational throughout the City. These procedures (No. 68-18) are set forth in Exhibit "1" to Commissioner Goldberg's affidavit of June 14, 1968, and also appear as Appendix D, below.

Thus, in order to consider the questions presented here the Court should examine the text of §351.26 as implemented by New York City in its Procedure No. 68-18 dated May 21, 1968.

The present procedure for termination of public assistance in New York City involves the following steps: (1) discussion by a caseworker with a client as to rea-

sons for proposed discontinuance of assistance; (2) report by caseworker to his unit supervisor; (3) approval by unit supervisor of proposed discontinuance; (4) a notice of proposed discontinuance with the reasons therefor is sent to the client. The notice also advises the client that he may request a review of the proposed discontinuance within seven days and that he may submit any statement or document in writing, personally or through an attorney or any other representative, to show his continued eligibility to receive public assistance. (5) Where a review is requested, a review officer, who is superior in position to the unit supervisor, reviews the case record and any material submitted by the client. Assistance is not terminated unless and until the review officer makes a decision adverse to the client. (6) If the decision is to discontinue assistance, the case record is returned to the unit supervisor and, in turn, to the caseworker who sends written notice of the decision to the client. This notice states the reasons for discontinuance and advises the client of his right to a Fair Hearing. (7) Thereafter a Fair Hearing before State officials will be held if requested and, if the result is adverse to the client, the determination is subject to judicial review under Article 78 of the New York Civil Practice Law and Rules. Federal regulations require that, where an incorrect decision is made adverse to the client, the agency must make corrected payments retroactive to the date the incorrect action was taken.

The procedure just outlined is derived from Regulation 351.26 of the New York State Department of Social Services; Procedure No. 68-18 of the New York City Department of Social Services; and United States Department of Health, Education and Welfare Handbook of Public Assistance Administration, Part IV—6000-6400, as amended on February 8, 1968 in Handbook Transmittal No. 140.

ARGUMENT

The Question Presented Is Substantial

1. The Regulation Challenged Below Is Constitutional and Should Be Sustained.

The formalities of judicial proceedings are not required at every stage of the administrative process, particularly where judicial review is available to correct error. "The requirements of due process frequently vary with the proceeding involved." *Hanah* v. *Larche*, 363 U. S. 420, 440 (1960). "What is due process of law must be determined by circumstances." *Reaves* v. *Ainsworth*, 219 U. S. 296, 304 (1911), *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150, 155 (1961).

In *Cafeteria and Restaurant Workers Union* v. *McElroy*, 367 U. S. 886 (1961), the court stated (pp. 894-895):

> "The Fifth Amendment does not require a trial-type hearing in every conceivable case of government impairment of private interest. * * * The very nature of due process negates any concept of inflexible procedures applicable to every imaginable situation. [citations omitted] '"[D]ue process", unlike some legal rules is not a technical conception with fixed content unrelated to time, place and circumstances.' It is 'compounded of history, reason, the past course of decisions * * *.' *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 162-163 (concurring opinion)."

Oral presentations are not invariably required. In *Federal Communications Commission* v. *W. J. R.*, 337 U. S. 265 (1949), the court said (p. 275):

> "[D]ue process of law has never been a term of fixed and invariable content. This is true with ref-

> erence to oral argument as with respect to other elements of procedural due process. For this Court has held in some situations that such argument is essential to a fair hearing, *Londoner* v. *Denver,* 210 U. S. 373, in others that argument submitted in writing is sufficient. *Morgan* v. *United States,* 298 U. S. 468, 481."

Similarly the participation of legal counsel is not always required in administrative proceedings. *Madera* v. *Board of Education of City of New York,* 386 F. 2d 778 (2nd Circ., 1967).

Under appropriate circumstances it is permissible for the government to act first and conduct all review proceedings later. In *Phillips* v. *Commissioner,* 283 U. S. 589 (1931), the court stated (pp. 595-597):

> "The right of the United States to collect its internal revenue by summary administrative proceedings has long been settled. Where, as here, adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained.
>
> * * *
>
> Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate."

In *United States* v. *Wood,* 61 F. Supp. 175 (D. Ct., Mass., 1945), the court stated (p. 179):

> "It is clear that, when administrative action is taken in an adversary proceeding without affording ade-

> quate notice and opportunity to defend to interested parties, basic constitutional rights are invaded • • • This does not mean that the hearing must invariably precede the administrative action. Where considerations of administrative expediency weigh heavily, and where opportunity for a full and adequate hearing is available within the administrative process, no fundamental rights are transgressed when the hearing follows, rather than precedes, the action of the administrative agency."

This Court, as illustrated above, has not defined "due process" as a set of rigid rules applicable regardless of the circumstances. Where private rights of life or liberty are in jeopardy, as in criminal proceedings, strict adherence to procedural safeguards is necessary. Where, however, the action in question is administratve in nature, subject to later judicial scrutiny, flexibilty of procedure appropriate to protect both the indivdual and the state is permissible.

There are hundreds of thousands of persons receiving public assistance in New York City. The cost of the program is enormous. The New York City Budget for 1966-67 provided $587,807,056 for public assistance (The City Record, 6/30/66, p. 52). For 1967-68 the figure was $839,155,551 (id. 6/29/67, p. 75). There is no reason to assume this figure will decline in the immediate future. There are obviously thousands of personal tragedies behind the statistics of public assistance. The need for aid is acute and in many cases chronic. The individual cases rightfully should elicit compassion, understanding and financial aid. A civilized society should do no less and probably should do much more than has been done to date.

This does not mean, however, that the program adopted by the legislature and supported by hundreds of millions of dollars should be administered without some regard for fiscal and administrative control. Some people apply for assistance who are not eligible. Some who are eligble later become ineligible and must be removed from the rolls.

In *Snell* v. *Wyman*, 281 F. Supp. 853, 859 (D. Ct., N. Y., 1968) affirmed .... U. S. ...., 89 S. Ct. 553 (1969) former Commissioner of Welfare Mitchell Ginsberg testified that his office had "a dual responsiblity. One is to the client and the other is to the accountability of the appropriate use of the public funds." The *Snell* case challenged the constitutionality of the recovery provisions of the Social Service Law (§§104, 360) and regulations. In sustaining the statute the court stated (p. 865):

> "Urging that the statutes be erased sweepingly on their face, plaintiffs ignore the fact that the discretion conferred upon administrators is subject to test and check both in administrative 'fair hearings' . . . and on judicial review under N. Y. CPLR Article 78."

The court below was properly concerned about the condition of welfare recipients and the added difficulties they would experience in the event of an erroneous decision to terminate benefits. It selected as case examples, however, persons whose benefits had been terminated without notice and without any opportunity for review under prior procedures superseded by the adoption of the regulation now challenged. Although the District Court sustained Section 351.26(a), as interpreted, it nevertheless struck down Section 351.26(b) as unconstitutional. Its conclusion seems to be based largely on prior terminations ef-

fective before any review procedures were in effect. The District Court did not measure Section 351.26(b) against the results obtained under its prior review procedures, but found it unconstitutional on its face as deficient in due process in light of the experience of beneficiaries who had no prior review at all.

This conclusion was not warranted under the circumstances. Section 351.26(b) can be made to work fairly, particularly when implemented under the carefully drawn provisions of New York City Procedure No. 68-18, annexed to appellant's affidavit of June 14, 1968, and set forth as Appendix D, below. There was no basis on which the District Court could predict that this newly implemented regulation would fail to protect welfare recipients and provide them in practice with at least the minimum requirements of due process of law. The regulation did not become effective until May 27, 1968, in New York City.

Appellees claimed that, even in the few weeks between the effective date of the regulation in New York City and the hearing before the three-judge Court, the regulation was not being implemented to their satisfaction. It was asserted that some of the notices were inadequate and, in effect, that errors might still occur. Under any new procedures affecting thousands of persons it is likely that errors may occur. They need not be fatal. They need not go uncorrected. Appellant was determined to implement the new regulation in a manner sympathetic and responsive to the rights of welfare beneficiaries and consistent with his duty to avoid waste of public funds. Section 351.26(b), as implemented by Procedure No. 68-18, affords adequate protection for appellees' rights and its use should not have been enjoined.

2. There Is a Conflict Between the Instant Decision Below and the Decision on a Similar Question in *Wheeler* v. *Montgomery, et al.* (Northern District of California, No. 48303, April 17, 1968, appeal docketed, 37 U. S. L. W. 3152, Oct. 22, 1968, No. 634) Now Pending in This Court.

In *Wheeler* v. *Montgomery, et al.*, questions very similar to those presented here were raised before a three-judge court. The California procedure, among other things, called for a conference between the client and "his caseworker, an eligibility worker, or another responsible person in the county department" to discuss the question of termination of assistance. Notice of the meeting was to be sent not later than three days prior to the next date a client might expect to receive a payment. The plaintiffs objected to the procedure on five grounds:

> "(1) the conference is with a county official of the agency which has already determined the question of eligibility rather than before an 'impartial' referee; (2) the three day notice requirement is too short; (3) no transcript is required to be made or furnished and the decision is not specifically required to be made only on the evidence present at the conference; (4) the burden of proof is on the recipient to establish eligibility and not on the county to establish ineligibility, and (5) confrontation and cross-examination are not required."

In sustaining the California procedure the court stated:

> "The constitutionality of the 'informal conference' must be determined in light of the fact that even if aid is terminated, the State of California must provide the recipient with the kind of hearing plaintiff

> seeks. At present such 'fair hearing' is required to be given within 45 days and a decision rendered within the next 75 days. As of July 1, 1968, the hearing and decision will be required to be made within 60 days."

A comparison of the New York provisions on termination with those sustained in *Wheeler* indicates that the New York provisions offer a more adequate opportunity for a meaningful review of the client's status prior to termination than the provisions approved in *Wheeler*. Even if this were not true, it does not follow that the New York procedure is unconstitutional. Uniformity among the states is not required although all must meet the same minimal standards.

In New York a person on public assistance must get at least seven days notice prior to termination. If the client requests a review of the proposed discontinuance, assistance will continue until the review officer makes his determination. If the review officer commits error, assistance payments will be restored in full retroactively after a "fair hearing." By comparison, a civil service employee can be suspended without pay for 30 days by immediate action of his department head who intends to prefer charges against him under Section 75 of the New York Civil Service Law. Similarly, teachers may be suspended without pay for 90 days pending disposition of charges (New York Education Law, §2573[7]). In both instances, if the charges are dismissed, the employee is entitled to reinstatement with full back pay. The reasons for these statutes have application here. Public money should not be paid out to persons who are not entitled to receive it.

Appellant does not claim that thousands of cases can be processed without error. Where error occurs however, it does not necessarily follow that the procedures are consti-

tutionally defective especially where both "fair hearing" procedures and judicial review are available to correct administrative mistakes. The present procedures strike a reasonable balance between the needs and rights of the welfare client and the need to protect the public's tax revenues. The policy at the federal, state and local level is clear: assistance must be provided for those who qualify but all reasonable efforts must be made to terminate promptly but fairly payments to all those who become ineligible. The procedures adopted in New York City for termination of public assistance should have been sustained.

CONCLUSION

For the reasons stated above, a substantial question under the Constitution is presented in this case. Jurisdiction should be noted.

March 5, 1969.

Respectfully submitted,

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APPENDIX A

Order Appealed From

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Three-judge Court

68 Civ. 394

68 Civ. 864

JOHN KELLY, et al.,

Plaintiffs,

RUBY SHEAFE, et al.,

Plaintiffs,

and

TERESA NEGRON, et al.,

Intervenor-Plaintiffs,

against

GEORGE K. WYMAN, et al.,

Defendants.

The plaintiff in these consolidated causes having moved this court for (1) a preliminary injunction staying the operation of 18 N. Y. C. R. R. 351.26(a) and (b), (2) an order dissolving the stay of discovery proceedings previously entered by the Honorable Frederick van Pelt Bryan, District Judge, (3) an order permitting them to amend the complaint in the consolidated case, and (4) an order

permitting them to add twelve intervenor-plaintiffs in the action, and the defendants having moved this court for summary judgment, and these motions having been considered by this court:

Upon the pleadings, affidavits and briefs submitted on behalf of the parties, and the United States as amicus, and the hearings held to date, and the opinion of this court dated November 26, 1968, and this court having found in said opinion that discontinuance of public assistance benefits without the opportunity for a prior hearing meeting the due process standards spelled out therein causes irreparable injury to recipients of public assistance wrongfully terminated and is a violation of the rights secured to them by the fourteenth amendment to the Constitution of the United States, it is

ORDERED, ADJUDGED AND DECREED THAT

1. Pending further order of this court or termination of this action, defendants and their officers, employees and agents are hereby enjoined and restrained from directly or indirectly discontinuing, or notifying recipients of an intent to discontinue, financial assistance pursuant to the state's public assistance programs in the manner prescribed by 18 N. Y. C. R. R. 351.26(b).

2. Plaintiffs' motion for a preliminary injunction staying the operation of 18 N. Y. C. R. R. 351.26(a) is denied, on the condition that 18 N. Y. C. R. R. 351.26(a) be construed to require, with respect to discontinuing, or notifying recipients of an intent to discontinue, said financial assistance, the following:

(a) Notice of the proposed action must be mailed to a recipient at least seven days prior to the pro-

posed effective date, advising the recipient of the reasons for the proposed action and his right to appear in person at a hearing before a review officer.

(b) There must be disclosure to the recipient at such hearing of the evidence, including the source thereof, relied upon for the proposed action and an opportunity for the recipient to confront and have questioned a person so disclosed if the value of his evidence depends upon his credibility and the latter is brought into question, unless secrecy in a particular case can be demonstrated to be an important interest of the agency.

(c) The review officer must be superior to the supervisor who proposed or approved the proposed action, and his decision must be based solely on the evidence before him which was made available to the recipient, with the exception for secrecy set forth above.

It is also ORDERED, ADJUDGED AND DECREED THAT:

3. Plaintiffs' complaints be deemed amended pursuant to their motion filed June 17, 1968,

4. The motion of the proposed intervenors to intervene as parties plaintiff is granted.

5. Plaintiffs' motion to dissolve the stay of discovery proceedings is denied.

6. Defendants' motion for summary judgment is denied.

7. Any issues relating to payment of retroactive benefits are reserved for further order of the court, upon

application of plaintiffs on due notice to defendants if plaintiffs and defendants are unable to agree as to the disposition of such matters.

8. This order and every section thereof is stayed to and including the 30th day of December 1968, to allow defendants to take the necessary steps to obtain a further stay, if they seek it, from the Supreme Court.

Dated: New York, N. Y.
December 13, 1968

WILFRED FEINBERG
U. S. C. J.

FREDERICK P. BRYAN
U. S. D. J.

EDWARD C. McLEAN
U. S. D. J.

APPENDIX B

Opinion of United States District Court, Southern District of New York

FEINBERG, Circuit Judge:

These consolidated actions present another in the increasing number of attacks on prevailing state welfare practices.[1] Plaintiffs claim that the procedures in New York State for termination of welfare benefits deny due process and violate both the Social Security Act and regulations of the United States Department of Health, Education, and Welfare (HEW). The eight plaintiffs (six in one action, two in the other) are New York City welfare recipients; their complaints sought the convening of a three-judge court and declaratory and injunctive relief under the Civil Rights Act, 42 U. S. C. § 1983, and the Social Security Act, 42 U. S. C. §§ 301 et seq. Defendants are the Commissioner of the New York State Department of Social Services, the State Board of Social Welfare and the Commissioner of the New York City Department of Social Services. In May 1968, over the objections of defendants, Judge Bryan convened a three-judge court pursuant to 28 U. S. C. §§ 2281, 2284. F. Supp. (S. D. N. Y. 1968). Thereafter, a briefing schedule was fixed and hearings were held in June and July on a number of motions. Because of the interest of the United States in the monies expended under New York State and City welfare programs and in

[1] See, e.g., King v. Smith, 392 U. S. 309 (1968); Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967), argued, 36 U. S. L. W. 3425 (U. S. May 7, 1968), reargued, 37 U. S. L. W. 3157 (U. S. Oct. 29, 1968) (No. 813, 1967 Term; renumbered No. 9, 1968 Term); Parrish v. Civil Serv. Comm'n, 66 Cal. 2d 260, 425 P. 2d 223, 57 Cal. Rptr. 623 (1967).

the procedures set up to administer them, the court invited the United States to submit an amicus brief, which it did in early October 1968. For reasons hereafter indicated, we grant plaintiffs' motion for a preliminary injunction in part and deny it in part, and deny defendants' moton for summary judgment; the disposition of other motions is set forth in detail below.

I

Welfare programs in the United States generally fall into two groups: general assistance and categorical assistance.[2] The former is financed only by state and local governments; the latter refers to programs supported by grants from the federal government under the Social Security Act to give aid to particular categories of individuals, e. g., aid to families with dependent children (AFDC). Four of the original plaintiffs in this action[3] were recipients of general assistance, home relief under the New York Social Welfare Law. The other four[4] were recipients of AFDC, which New York State administers in accordance with the Social Security Act, 42 U. S. C. §§ 601-09. Funds of the United States are involved only in the latter program.

It is instructive on the state of administration of public welfare to review how both federal and New York State and City regulations have changed just since the institution of this consolidated action. At the time the

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[2] See Note, Federal Judicial Review of State Welfare Practices, 67 Colum. L. Rev. 84 (1967).

[3] John Kelly, Randolph Young, Juan DeJesus and Ruby Sheafe.

[4] Pearl McKinney, Pearl Frye, Altagracia Guzman and Esther Lett. Twelve additional plaintiffs also sought to intervene. Of these, 10 were also in the AFDC program, and 2 received home relief only.

complaints were filed, state regulations dealing with both home relief and AFDC programs apparently required no *prior* notice at all of suspension of benefits and no hearing *prior* to that action. However, a state hearing procedure, which is designated as a "fair hearing," had been instituted to provide an administrative remedy *after* suspension or termination of benefits; in the case of home relief, the procedure went into effect barely two weeks before the first complaint was filed in this case. After the action began, the State Department of Social Services amended its regulations, effective March 1, 1968, to provide notice and an "administrative hearing" *before* termination of public assistance. Thereafter, apparently because the New York City Department of Social Services felt that it could not feasibly comply with that regulation, it was repealed, and a new regulation was adopted. Under it, welfare departments may choose one of two options described below, both of which continue to provide notice and a type of hearing before cessation of benefits. Subsequent to the State amendments, HEW adopted a new criterion for the administration of state plans, effective July 1, 1968, which requires that the agency:

> Gives advance notice of questions it has about an individual's eligibity so that a recipient has an opportunity to discuss his situation before receiving formal written notice of reduction in payment or termination of assistance.

Handbook of Public Assistance Administration, Part IV, § 2300 (d) (5) (1968) ("Handbook").

The remedies for a welfare recipient who has been wrongfully suspended or terminated have also been changed in another significant respect. At the time the

suit was commenced, New York granted a reinstated recipient retroactive benefits for only two months and then only to the extent of debts for necessities which had been incurred.[5] Since the delay between wrongful termination of benefits and subsequent reinstatement often exceeded two months, the limit on retroactivity worked hardship. However, effective July 1, 1968, pursuant to a change in regulations issued by HEW, payments are now made fully retroactive and are not confined to reimbursement for debts incurred.[6]

As a result of these changes, welfare recipients in New York State now have a two-step procedure to protect them against alleged wrongful termination or suspension of benefits. The first, or pre-termination procedure, depends upon which of two options the local welfare agency has adopted. We are advised that in New York State, option (a) is in effect everywhere but in New York City, which has chosen to follow option (b). Both options are set forth in the margin.[7] Under option (a), the local

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[5] See 18 NYCRR 325.5(n)(5) (superseded 1968).

[6] See Handbook, Part IV, §§ 6200(k), 6300(g) (1968); 18 NYCRR 325.5(n)(6), as amended (Order of New York State Dept. of Social Services, June 28, 1968).

[7] Proposed discontinuance or suspension of grant; prior notice to recipient; additional local review and subsequent determination. When a social services official proposes to discontinue or suspend a grant of public assistance he shall proceed in accordance with the provisions of either subdivision (a) or (b) below:

(a) He shall notify the recipient in writing of his intention to discontinue or suspend the grant at least seven days prior to the proposed effective date of the discontinuance or suspension, together with the reasons for his intended action, unless such dis-

(footnote continued on next page)

agency must give seven days written notice, specifying the reasons for suspension, before aid is stopped. The recipient is entitled to appear before an official, who is

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continuance or suspension is in response to the request of the recipient or is due to: the death of the recipient who is an unattached person; the recipient's admission to an institution wherein his assistance may not be continued; the recipient's whereabouts being unknown to the social services official because the recipient moved from his last known address without notifying the social services official and without leaving a forwarding address; the recipient's moving from the state and establishing his permanent home elsewhere; the recipient's case having been reclassified as to category. Such notification shall further advise the recipient that if he makes a request therefor he will be afforded an opportunity to appear at the time and place indicated in the notice before the person identified therein who will review his case with him and will afford him opportunity to present such written and oral relevant evidence and reasons as the recipient may have to demonstrate why his grant should not be discontinued or suspended, and that the recipient may appear and present such evidence and reasons on his behalf with or without the assistance of an attorney or other representative. Only the social services official or an employee of his social services department who occupies a position superior to that of the supervisor who approved the proposed discontinuance or suspension shall be designated to make such a review. When a recipient requests such a review the designated person shall, at the time and place indicated in the notice to the recipient, review with the recipient and his representative, if any, the evidence and reasons supporting the proposed action and shall thereupon afford the recipient opportunity to present relevant evidence and to state reasons why the proposed discontinuance or suspension should not be made. When such a review has been made by a designated employee, such employee shall promptly make an appropriate written recommendation to the social services official, together with his reasons therefor, including reference to applicable provisions of law, Board rules, Department regulations.

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superior to the one who approved the suspension, and can present oral and written evidence with the aid of an attorney or other representative. Option (b), adopted

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and approved local policy. After such a review the social services official shall expeditiously determine whether the proposed discontinuance or suspension shall or shall not be made effective as proposed, after considering all the evidence before him and the recommendation, if any, of the employee designated by him to review the proposed action with the recipient. The social services official shall then promptly send an appropriate written notice of his decision to the recipient and his representative, if any, and to the Department's area office. Assistance shall not be discontinued or suspended prior to the date such notice of decision is sent to the recipient and his representative, if any, or prior to the proposed effective date of discontinuance or suspension, whichever occurs later.

(b) A social services official may adopt a local procedure concerning discontinuance or suspension of grants of public assistance and submit to the Department such procedure for its approval. Upon approval such local procedure shall become effective. Such local procedures must include the following:

(1) Notice to the recipient of proposed discontinuance or suspension of the grant at least seven days prior to the proposed effective date of the discontinuance or suspension, together with the reasons for the intended action, unless such discontinuance or suspension is in response to the request of the recipient or is due to: the death of the recipient who is an unattached person; the recipient's admission to an institution wherein his assistance may not be continued; the recipient's whereabouts being unknown to the social services official because the recipient moved from his last known address without notifying the social services official and without leaving a forwarding address; the recipient's moving from the state and establishing his permanent home elsewhere; the recipient's case having been reclassified as to category.

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by New York City, offers less procedural protection; e. g., although the notice provision is the same, the welfare recipient is entitled to submit a statement in writing to demonstrate why aid should continue. Under either option, if the recipient is unsuccessful, benefits cease. Thereafter, the terminated recipient is entitled to the second step, the so-called state "fair hearing,"[8] which spells out significant procedural rights and is a trial-type proceeding. Thus, that hearing is before an independent state hearing officer; the complaining recipient has the right of confrontation and cross-examination of

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(2) The notice must advise the recipient that, if he so requests, the proposed discontinuance or suspension will be reviewed and he may submit in writing a statement or other evidence to demonstrate why his grant should not be discontinued or suspended.

(3) A review of the proposed discontinuance or suspension shall be made by the social services official or an employee of his social services department who occupies a position superior to that of the supervisor who approved the proposed discontinuance or susension.

(4) After review of the relevant materials in the recipient's file including any written material submitted by him the decision shall be made expeditiously as to whether the proposed discontinuance or suspension shall or shall not be made effective as proposed. Appropriate written notice of the decision shall be sent to the recipient and to the Department's area office. Assistance shall not be discontinued or suspended prior to the date such notice of decision is sent to the recipient and his representative, if any, or prior to the proposed effective date of discontinuance or suspension, whichever occurs later.

18 NYCRR 351.26.

[8] 18 NYCRR 84.2-23.

the witnesses against him; and a verbatim record is made of the hearing. The state regulations provide that the state fair hearing is to be held within ten working days of receipt of a request for the hearing, and a decision is to be rendered as soon as feasible, and, in any event, not later than twelve working days from the close of the hearing.[9]

II

Plaintiffs allege that even with the improved procedures, they are threatened with termination of assistance in a manner that is both unconstitutional and improper under the governing statute and regulations. Their constitutional argument is that under the due process clause of the fourteenth amendment they are entitled to a constitutionally adequate hearing before termination of benefits and that the procedures provided by the state and city do not meet this standard. Defendants do not deny plaintiffs' general propositions that the terminations here under attack amount to "state action" and that the protections of the due process clause apply. Nor do defendants attempt to argue that welfare benefits are a "privilege," rather than a right, and that therefore they may fix the procedures of termination as they see fit.[10] However, defendants do claim that the combined

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[9] We are advised by the amicus brief of the United States that HEW has found that the new state "fair hearing" plan is not acceptable, as it fails to comply with federal standards, see Handbook, Part IV, §§ 6000-6500 (1968), in several respects, but that New York is in the process of revising the plan to meet federal requirements.

[10] Cf. C. Reich, The New Property, 73 Yale L. J. 733 (1964); W. Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 Harv. L. Rev. 1439 (1968).

hearing procedures now provided to welfare recipients meet constitutional and statutory requirements.

We agree with defendants that the state fair hearing procedure after termination of benefits seems constitutionally sufficient.[11] Defendants argue that combining the post-termination procedure with an informal pre-termination "hearing" disposes of all due process claims, citing principally Wheeler v. Montgomery, No. 48303 (N. D. Cal. April 17, 1968) (three-judge court), appeal docketed, 37 U. S. L. W. 3152 (U. S. Oct. 22, 1968) (No. 634). In that case, as in this, state hearing procedures for termination of welfare changed during the litigation. There, the state provided an "informal conference" before termination and a full hearing procedure within a few months thereafter. The court determined the constitutionality of the former "in light of" the latter and held that the combined procedure complied with due process.[12]

While post-termination review is relevant, there is one overpowering fact which controls here. By hypothesis, a welfare recipient is destitute, without funds or assets. The case of Angela Velez, one of the proposed intervenors, makes the point starkly. She was terminated on March 11, 1968, because her husband allegedly visited her home every night. She requested the post-termina-

[11] Although one of the United States' objections to this procedure, see note 9 supra, is that it fails to provide specifically that the hearing officer's decision must be based only upon evidence which is a part of the record, for constitutional purposes we would construe the regulations, see 18 NYCRR 84.15(a), to include such a requirement, in accordance with this opinion.

[12] Apparently a California state court disagreed with the California federal court. See McCullough v. Terzian, No. 379011 (Cal. Super Ct., Alameda County, May 1968).

tion state fair hearing in mid-March. The hearing was held in June, and, pursuant to the request of this court for expedition, the decision issued on July 10. The State Commissioner found that the information that caused suspension of benefits came from Mrs. Velez's landlady, that the information was untrue, that the husband does not live with his wife, that she had obtained a court order in 1966 to prevent his night visits, that he is allowed to visit the four small children only on Wednesday, and that at that time he brings his support money of $30 a week, but no more, in accordance with an agreement worked out in Family Court. Accordingly, the State Commissioner directed the local agency to reinstate assistance. However, in the four months between termination of AFDC benefits and the decision reversing the local agency, Mrs. Velez and her four children, ages one to six were evicted from her apartment for nonpayment of rent and went to live with her sister, who has nine children and is on relief. Mrs. Velez and three children have been sleeping in two single beds in a small room, and the youngest sleeps in a crib in the same room. Thirteen children and two adults have been living in one apartment, and Mrs. Velez states that she has been unable to feed her children adequately, so that they have lost weight and have been ill.

The case of Mrs. Esther Lett, one of the original plaintiffs, is also instructive. According to the affidavits of plaintiff Lett and her Legal Aid Society attorney: She and her four dependents, aged three months to fifteen years, were abruptly terminated from public assistance on February 1, 1968. The purported ground was that she had concealed her current employment by the Board of Education. In fact, she had worked for Operation Head Start in July and August 1967, but had not been employed

by the Board of Education after August 20, 1967. Since that date and up to February 1968, she had worked at Day Care Centers on twenty-six different days, earning a total of $300, with the knowledge of the local welfare agency. As a result of termination of assistance, she and her dependents were forced to live on the handouts of neighbors. On February 18, she and her family had to go to the hospital for severe diarrhea, apparently brought on by the only meal they had had that day—spoiled chicken and rice donated by a neighbor. She applied for emergency aid and a post-termination state "fair hearing" but the aid was refused and the fair hearing was not scheduled. Through the herculean efforts of The Legal Aid Society, including numerous telephone calls and three personal trips to local agencies, it was learned that the Board of Education had apparently made an error. However, the Board would not so inform the welfare agency until it requested a new verification. On Tuesday, February 27, Mrs. Lett went to a local center to seek emergency aid. Because she had not eaten all day, she fainted in the center, but when she awoke she was told that she could not get money for food immediately because it had not yet been authorized. Finally, after waiting eight hours, she was given $15 to feed herself and four dependents and told to return on Friday. After suit was brought, her assistance was apparently temporarily reinstated without prejudice.

We do not know what the truth is with regard to Mrs. Lett's alleged concealment of employment, although on the present record it appears that the termination of benefits was improper.[13] As for Mrs. Velez, it is clear that the de-

[13] Benefits to Mrs. Lett had also been suspended during March 1967; the suspension was found to be improper in a fair hearing decision in November 1967.

cision to terminate her payments was wrong. But the issue is not whether a specific termination was proper, but whether the procedures used were justifiable. There is no need to elaborate with further case histories. Suffice it to say that to cut off a welfare recipient in the face of this kind of "brutal need"[14] without a prior hearing of some sort is unconscionable, unless overwhelming considerations justify it. Traditionally, such considerations have been urgent in nature and involve the health, safety, or well-being of many individuals. "Drastic administrative action is sometimes essential to take care of problems that cannot be allowed to wait for the completion of formal proceedings." 1 K. Davis, Administrative Law Treatise ¶ 7.08, at 438 (1958), citing cases where great harm to the public was, or could be, immediately threatened.[15]

We turn then to examine the pressing need here that would justify a departure from the general standard of "the requisite [due process] hearing . . . before the final order becomes effective."[16] Simply stated by defendant New York City Commissioner, it is the "need to protect the public's tax revenues." This is, of course, not only a legitimate, but a necessary, concern of defendants, but the argument requires close analysis. Clearly, the state must see to it that assistance goes only to those who are entitled to it. However, the issue here affects only the continuation of bene-

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[14] See Note, Withdrawal of Public Welfare; The Right to a Prior Hearing, 76 Yale L. J. 1234, 1244 (1967) ("Yale Note").

[15] E.g., Ewing v. Mytinger & Casselberry, Inc., 339 U. S. 594 (1950) (mislabeled food products); Fahey v. Mallonee, 332 U. S. 245 (1947) (summary seizure of savings and loan association by conservator). See also cases cited in Yale Note 1240-41 nn. 26-35.

[16] Opp Cotton Mills, Inc. v. Administrator, 312 U. S. 126, 152-53 (1941).

fits while a claim of ineligibility is disputed. Defendants' asserted justification for the termination procedures now being used is therefore quite narrow. It is the additional cost of providing more elaborate procedures to determine whether the tentative decision to terminate benefits was correct, a cost which may come both from an increase in the number of hearings and from an extension of average time from notice of termination to end of hearing, during which period benefits continue. It is clearly within the power of the state and city to minimize that additional cost by various methods, e.g., by expediting hearings, by increasing the number of hearing officials, by utilizing statutory rights to recover monies paid since the date of ineligibility. Cf. Snell v. Wyman, 281 F. Supp. 853 (S. D. N. Y. 1968), appeal docketed, 36 U. S. L. W. 3489 (U. S. June 10, 1968 (No. 1529, 1967 Term; renumbered No. 191, 1968 Term). Moreover, it should be remembered that, insofar as ADFC or other categorical assistance is concerned, federal contributions are available to meet fifty per cent of the cost of benefits paid pending review and the administrative expense of the hearing procedures. See Handbook, Part IV, § 6500 (1968).

Against the justified desire to protect public funds must be weighed the individual's overpowering need in this unique situation not to be wrongfully deprived of assistance, and the startling statistic that post-termination fair hearings apparently override prior decisions to terminate benefits in a substantial number of cases.[17] The obvious fact

[17] Thus, it appears from the state wide figures submitted by defendants that in the fair hearings on discontinuance which reached decision from April through August of this year, only 50 of 78 cases, or 64%, were affirmed. Seventeen were reversed in whole, 1 in part, 3 remanded, and 7 received "miscellaneous" dispositions. Later figures for September and October, just submitted by defendants, show a higher percentage of affirmances.

is that there is no way truly to make whole a recipient like Mrs. Velez for the indignity of living with her sister and thirteen children in one apartment because of a wrongful termination. The equally obvious remedy is to take greater care to prevent such injustice before it occurs. While the problem of additional expense must be kept in mind,[18] it does not justify denying a hearing meeting the ordinary standards of due process.[19] Under all the circumstances, we hold that due process requires an adequate hearing before termination of welfare benefits, and the fact that there is a later constitutionally fair proceeding does not alter the result.[20] In short, we must focus on the adequacy of the hearing procedures which defendants have provided prior to termination of benefits.

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[18] It has been noted that "the welfare system is designed to save money instead of people, and tragically ends up doing neither." David Ginsberg, Exec. Dir. Nat'l Advisory Comm'n on Civil Disorders, 23 Record of N. Y. C. B. A. 28 (Supp. 1968), quoting Mitchell Ginsberg, former head of New York City's Department of Welfare.

[19] Cf. D. Morris, Welfare Benefits as Property: Requiring a Prior Hearing, 20 Admin. L. Rev. 487, 506 (1968): "The state interest which circumscribes the property interest of a welfare recipient and also affects the type of procedural due process afforded is not the state's interest in its funds, but only whether the funds themselves accord with the aims of society."

[20] We note, in this context, that the United States indicates that HEW is presently considering adoption of a policy by which assistance would continue until a fair hearing decision was reached in at least some types of termination cases. This consideration, along with the present federal requirement of advance notification and opportunity for discussion, see pp. 5-6 supra, reinforces our expectation that providing adequate prior hearings will not unduly burden the administration of the welfare system.

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III

Cases dealing with procedural requirements of a hearing before an administrative tribunal are many and varied, involving such diverse administrative actions as discharge from public employment,[21] refusal to license,[22] revocation of security clearance, [23] treatment of aliens,[24] and admission to the bar,[25] to name only a few. Before considering plaintiffs' formidable list of objections to the pre-termination hearing procedures afforded welfare recipients, some observations based upon these and related cases may be in order.

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Of course, we do not suggest that the same procedures are constitutionally requisite in all forms of social security administration. In the operation of the federally-administered Old-Age, Survivors, and Disability Insurance program, for example, the amicus brief indicates that no hearing prior to termination is available as of right. However, as that brief points out, there are far fewer reasons for termination of OASDI benefits than in the AFDC program, and these reasons are based on more objectively ascertainable facts. In OASDI the circumstantial changes on which termination is based are nearly always reported or confirmed by the recipient himself, and the likelihood of severe hardship resulting from erroneous termination is certainly not as great as in the welfare programs here in issue.

[21] Slochower v. Board of Educ., 350 U. S. 551, 554 (1956); cf. Parker v. Lester, 227 F. 2d 708 (9th Cir. 1955).

[22] Bratton v. Chandler, 260 U. S. 110 (1922); Hornby v. Allen, 326 F. 2d 605 (5th Cir. 1964).

[23] Greene v. McElroy, 360 U. S. 474 (1958).

[24] Kwong Hai Chew v. Colding, 344 U. S. 590 (1953).

[25] Willner v. Committee on Character and Fitness, 373 U. S. 96 (1963). See also Goldsmith v. U. S. Board of Tax Appeals, 270 U. S. 117 (1926).

Appendix B—Opinion of United States District Court, Southern District of New York

1. It is impossible to define rigidly what constitutes procedural due process for all purposes. "[D]ue process of law has never been a term of fixed and invariable content." FCC v. WJR, 337 U. S. 265, 275 (1949). "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Cafeteria Workers Local 473 v. McElroy 367 U. S. 886, 895 (1961).

> "Due process" is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. . . . [A]s a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account.

Hannah v. Larche, 363 U. S. 420, 442 (1960).

2. While it is a well established principle that courts should not decide issues of procedural deficiency on constitutional grounds if any other avenues of decision are open, see Greene v. McElroy, 360 U. S. 474, 509 (1959) (concurring opinion); Ashwander v. TVA, 297 U. S. 288, 346-47 (1936) (concurring opinion), we believe that the constitutional issue must be faced here. It is true that plaintiffs not only invoke due process but also rely on the requirement of the Social Security Act, 42 U. S. C. § 602(a)(4) that

Appendix B—Opinion of United States District Court, Southern District of New York

> A State plan for aid and services to needy families with children must . . . (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness. . . .[26]

By interpreting the statutory phrase "fair hearing" in the context of pre-termination procedures,[27] we might have avoided the constitutional questions. See Greene v. McElroy, 360 U. S. 474, 496-97, 507-08 (1959). However, the command of the federal statute does not apply to state and local general assistance, for which no federal funds are provided. Six of the original and intervening plaintiffs [28] receive such assistance only; as to them the constitutional issue is squarely posed.

3. We must thus decide what specific procedural safeguards are constitutionally required for welfare recipients in a pre-termination proceeding. While the Supreme Court has been solicitous to assure "traditional forms of fair procedure" in administrative hearings, Greene v. McElroy, supra, 360 U. S. at 508, we do not believe that every person directly affected by administrative action must be afforded all of the procedural rights guaranteed in a full-fledged judicial trial. See, e.g., Dixon v. Alabama, 294 F. 2d 150, 159 (5th Cir.), cert. denied, 368 U. S. 930 (1961); cf. Hyser v. Reed, 318 F. 2d 225 (D. C. Cir.), cert. denied, 375 U. S. 957 (1963). Rather, we are called upon to determine what minimum procedural safeguards are required here in the context of the welfare system.

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[26] Cf. 42 U. S. C. §§ 302(a)(4), 1202(a)(4), 1352(a)(4), 1382(a)(4).

[27] See recent HEW regulation quoted at p. 6, supra.

[28] See notes 3, 4 supra and accompanying text.

IV

We turn first to the procedures provided under option (b) which is in effect in New York City. Option (b) provides for notice of "proposed discontinuance or suspension . . . together with the reasons for the intended action," and allows the recipient in response only to "submit in writing a statement or other evidence to demonstrate why his grant should not be discontinued. . . ." The option does not envisage a personal appearance.

A hearing on a proposed termination of welfare benefits is, of course, a classic instance of determination of what have been called "adjudicative facts—facts pertaining to a particular party." 1 K. Davis, Administrative Law Treatise ¶ 7.20, at 506 (1958). If the right to a hearing in this context, fairly construed, means anything, it is literally the right to be heard. This is hardly a novel idea. In Londoner v. Denver, 210 U. S. 373 (1908), the Supreme Court specifically rejected the notion that permission to submit objections in writing comported with due process, and concluded that "a hearing in its very essence demands that he who is entitled to it shall have the right to support his allegations by argument however brief, and, if need be, by proof, however informal." 210 U. S. at 386. See also Goldsmith v. U. S. Board of Tax Appeals 270 U. S. 117, 123 (1926). We do not deal here with the issue whether procedural due process requires the right to oral argument on a matter of law. See FCC v. WJR, 337 U. S. 265, 276 (1949). We have the different question whether a welfare recipient has the right to appear in person before the welfare agency to present his case. On a issue of such immediate and crucial impact as termination of welfare benefits, we conclude that the right to be heard means the right to

be heard in person. Defendants cite to us Morgan v. United States, 298 U. S. 468, 481 (1936), and Boston & Maine R.R. v. United States, 208 F. Supp. 661 (D. Mass.), aff'd mem., 371 U. S. 26 (1962). It is true that Morgan contained the dictum that "[a]rgument may be oral or written," 298 U. S. at 481, but we do not take that to mean that in this case there is no constitutional right to present evidence as opposed to argument, in person. Moreover, the case is clearly distinguishable on its facts.[29] In Boston & Maine, plaintiffs had had "a full opportunity to present their defense by oral and documentary evidence." 208 F. Supp. at 667.

Not only is the right to a personal appearance ordinarily implicit in the constitutional concept of a fair hearing, but the reality of the status of many welfare recipients makes the invitation to submit their cases in writing cruelly ironic. The burden of marshalling and writing down persuasive arguments in opposition to frequently vague or cryptic charges would discourage even a relatively well-educated layman. In fact, many welfare recipients clearly lack the education or sophistication either to understand the reason for their proposed termination or to prepare an adequate written defense.[30] Moreover, a review of the cases of the

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[29] *Morgan* was a challenge to administrative rate making; plaintiffs had had the opportunity to present oral argument on evidence before the agency in question; and the holding of the case was that decision could not be made by an officer who had not considered the evidence or argument. As to the subsequent treatment of *Morgan*, see W. Gellhorn & C. Byse, Administrative Law 1086-89 (4th ed. 1960).

[30] A recent study has established that only 57% of the mothers on welfare in New York City had attended high school at all; that only 1 of 6 had graduated; and that 1 of 6 had not even gone beyond fourth grade. See I. Cox, Families on Welfare in New York City, 6 Welfare in Review 22, 24 (1968).

individual plaintiffs in this action is persuasive that many of the disputes as to eligibility could have been easily resolved by an interchange of questions and answers between the recipient and the welfare official supervising the case. In the case of Mrs. Lett, for instance,[31] a conference about the facts of her employment with an impartial official might have quickly cleared up the misunderstanding and prevented the severe hardships that she suffered. Certainly the give and take of an informal hearing would be more likely to produce a just disposition than an attempt on her part to furnish a written rebuttal of her alleged "failure to disclose assets."

Even if the majority of welfare recipients were educationally equipped to write a clear statement of the reasons why they should not be terminated the very summary form of notice of proposed terminations makes an intelligent reply difficult.[32] Not only are the reasons given often incomprehensibly vague, but additional or wholly different reasons may in fact be behind the decision to terminate.[33] A personal hearing is necessary, if the recipient wishes it, both to explain to him the nature of the charges against him and to inform him of the evidence on which they are based. Indeed, the next most glaring deficiency of option

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[31] See pp. 10-12 supra.

[32] The charge of "failure to comply with Department resource policy" made to intervenor-plaintiff Sidor, for example, is virtually impossible to disprove without further information.

[33] The cryptic notice given intervenor-plaintiff Soto, for example, was "failure to attend rehabilitation C. O. C." The decision of the review officer, however, refers to quite different reasons—that Mr. Soto took drugs, was reported to be "a parasite" and "playing a game," and had frequently failed to cooperate.

(b) is its failure to require disclosure to the recipient of the real basis of the case against him. It merely provides for notice of proposed discontiuance "together with the reasons for the intended action." This procedure clearly falls far short of giving the recipient sufficient notice of the case against him so that he may ascertain its basis and contest it effectively. In Willner v. Committee on Character and Fitness, 373 U. S. 96, 107 (1963), the concurring opinion of Justices Goldberg, Brennan and Stewart states:

> The constitutional requirements in this context may be simply stated: in all cases in which admission to the bar is to be denied on the basis of character, the applicant at some stage of the proceedings prior to such denial, must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence.

At least seven, if not all,[34] of the Justices agreed with this statement.

The stakes are simply too high for the welfare recipient, and the possibility for honest error or irritable misjudgment too great, to allow termination of aid without giving the recipient a chance, if he so desires, to be fully informed of the case against him so that he may contest its basis and

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[34] The dissenting opinion (Harlan, J., joined in by Clark, J.) held that the petition for certiorari should have been dismissed as improvidently granted, but characterized as "questionable" any holding that "an applicant for membership in the New York Bar may be denied admission without having had the opportunity at any stage to confront persons whose unfavorable information may have led the Character Committee to refuse to certify the candidate's 'character and fitness.'" 373 U. S. at 110.

produce evidence in rebuttal.[35] Moreover, in some instances at least, he must be permitted to meet the evidence against him by having questions put to the source of that evidence. There have been cited to us too many case histories in which welfare recipients have allegedly been cut off on the basis of untrue rumors and reports, as with Mrs. Velez, discussed above. We do not hold that the welfare recipient about to be terminated must be accorded the opportunity for confrontation and cross-examination in a formal manner, with the full panoply of a trial-type hearing, including testimony under oath. The right to face those providing harmful information and have them interrogated may be substantially achieved in an informal way, and we use the term "cross-examination" here in that less formal sense. Moreover, we are aware that such a requirement is time-consuming and if applied indiscriminately in every case might unduly delay administration of the entire welfare system. There will undoubtedly be many cases—perhaps a great many—in which the material relied upon by the welfare agency "appears from information supplied or confirmed by the applicant himself, or is of an undisputed documentary character disclosed to the applicant. . . ." Willner v. Committee on Character and Fitness, 373 U. S. 96, 108 (1963) (concurring opinion).[36] But where

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[35] See Bratton v. Chandler, 260 U. S. 110 (1922); Gonzales v. United States, 348 U. S. 407, 415 (1955); Dixon v. Alabama State Bd. of Educ., 294 F. 2d 150, 159 (5th Cir.) cert. denied, 368 U. S. 930 (1961); Parker v. Lester, 227 F. 2d 708, 716-17 (9th Cir. 1955).

[36] Intervenor-plaintiff Fuentes, for instance, was given notice of termination because "You have a large sum of money in the bank for which you were unable to give a satisfactory explanation." In such a case, an official statement from the bank would ordinarily be adequate to support the agency's claim. Again, the issue may be simply the proper application of agency regulations to an undisputed factual situation.

termination of benefits "depends upon information supplied by a particular person whose reliability or veracity is brought into question by the applicant, confrontation and the right of cross-examination should be afforded." Id.[37] It may be that something less would be appropriate in such a case if the welfare authorities could show an important interest in secrecy, cf. McCray v. Illinois, 386 U. S. 300 (1967), but no such interest has been demonstrated in any of the cases before us. We assume that any such situation would be the rare exception to be justified on the particular facts involved. We do not suggest that a "tip" or other confidential information may not properly trigger an investigation of a welfare recipient's eligibility. We hold only that when the decision is made to terminate benefits, the recipient must be afforded an opportunity to learn the evidence against him which the investigation turned up, if it was a basis of that decision, and when the value of that evidence turns upon a person's credibility, the recipient must have the opportunity to test it as set forth above. We realize that these requirements will duplicate the "fair hearing" post-termination procedure to some extent. However, any pre-termination hearing—even the type already put into effect by the state—also does that. Undue duplication is of course regrettable. However, we regard the informal conference envisioned here as quite different from a full-fledged trial-type post-termination "fair hearing" with testimony given under oath. In any event, in light of the shattering effect of wrongful termina-

[37] See Greene v. McElroy, 360 U. S. 474, 496-97 (1959); Gonzalez v. Freeman, 334 F. 2d 570, 578-80 (D. C. Cir. 1964); Hornsby v. Allen, 326 F. 2d 605, 608 (5th Cir. 1964); Rios v. Hackney, CA2-1852 (N. D. Texas, Nov. 30, 1967). But cf. Brown v. Gamage, 377 F. 2d 154 (D. C. Cir.), cert. denied, 389 U. S. 858 (1967), criticized in 20 Stan. L. Rev. 360 (1968).

tion of benefits upon a recipient, we believe that the procedures called for here are minimum requirements of due process.

Accordingly, therefore, we conclude that option (b) is constitutionally inadequate and that plaintiffs' application for a preliminary injunction against the use of the option in New York City must be granted. However, because argument has also been addressed to the legal sufficiency of the provisions of option (a) and because New York will be faced under our ruling with the need to substitute for option (b), we feel it is our obligation also to consider the constitutionality of procedures under option (a).

That option states that the notice of proposed termination shall advise the recipient that if he makes a request for review he will be afforded:

> opportunity to present such written and oral relevant evidence and reasons as the recipient may have to demonstrate why his grant should not be discontinued or suspended, . . .

and at such a review, the designated welfare official shall:

> review with the recipient and his representative, if any, the evidence and reasons supporting the proposed action and shall thereupon afford the recipient opportunity to present relevant evidence and to state reasons why the proposed discontinuance or suspension should not be made.[38]

This language makes clear that option (a) does not suffer from some of the obvious inadequacies of option (b). Thus, option (a) does provide for a hearing in person,

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[38] See note 7 supra.

and, fairly construed, for disclosure to the recipient of the evidence against him. It is not clear whether the source of the evidence must be identified and the recipient thereafter given the right, in an appropriate case, to confront a person so disclosed and have him questioned. The regulation's silence on this point, when compared with the specificity of the state hearing procedure provided after termination,[39] might indicate that the recipient is denied such right. We have already ruled that this would be constitutionally invalid. Therefore, unless option (a) is construed to afford a recipient such right in an appropriate case, the procedure is improper. But in view of the newness of the regulation and the paucity of information given us on its use outside of New York City, we will not assume at this time that the right will be denied.

Plaintiffs have other objections to option (a), but to the extent that they have not already been dealt with, they do not require extensive discussion.[40] Implicit in what we have already said is the requirement that the decision of the reviewing offical must be based solely on evidence before him which has been made available to the recipient,

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[39] "Each party has a right to be represented by counsel, or other representative, to testify, to produce witnesses to testify, to offer documentary evidence, to cross-examine opposing witnesses, to offer evidence in rebuttal and to examine any documentary evidence offered by the other party." 18 NYCRR 84.13(c).

[40] HEW is apparently seeking clarification at this time from the New York Welfare Department on the grounds that the New York prior review procedure is not expressly available in cases of reduction of benefits as well as termination, as is required by the Handbook, Part IV, § 2300(d)(5)(1968). Since plaintiffs have not raised this issue, we do not consider it here.

except in the rare instance already discussed when there is an important interest in secrecy.[41] An objection is made to the notice requirement, but it is not persuasive. Option (a) requires notice in writing "at least 7 days prior to the proposed effective date of the discontinuance." We construe this to mean that the notice must be mailed at least seven days before such effective date. If so mailed, the notice is adequate.

The final objection to option (a) as written is that the welfare official reviewing the proposed termination of benefits is not impartial. Option (a) provides that:

> Only the social services official or an employee of his social services department who occupies a position superior to that of the supervisor who approved the proposed discontinuance or suspension shall be designated to make such a review.

This is obviously an attempt to have "review" of a supervisor's decision to terminate by someone more disinterested than he is. Since the review, however, is by another employee of the welfare agency, there is a possibility that the reviewing official will have had some prior official contact with the case. However, we are unable to say that the possible involvement of that official in aspects of a case prior to the review of proposed termination necessarily disqualifies him from conducting a fair hearing. Some degree of previous familiarity and informal contact with a case by a hearing officer is a common phenomenon in many administrative agencies. That the review officer is familiar with, or even has formulated opinions about, the facts of a case prior to review

[41] See p. 23 supra.

is not in itself sufficient to disqualify him.[42] However, plaintiffs argue that this reviewing officer is in practice frequently a case supervisor who has been consulted in advance for approval of proposed terminations and may even have initiated the recommendation to terminate. We would regard such a practice as a clear violation of the spirit of the requirement that the reviewing officer be superior to "the supervisor who approved the proposed discontinuance". In other words, the regulation meets the requirement of a fair hearing, but we expect the welfare department to enforce it strictly.[43]

In addition to their allegations of the insufficiency of the New York hearing procedures on their face, plaintiffs complain that the regulations themselves are frequently disregarded or improperly applied. They have offered evidence showing, for instance, that the notice often is not sent out within seven days of the proposed termination or before termination at all, that notices fail to state the full or real reasons for proposed termination, and that the review decision is frequently delayed unduly. We recognize that the transition to a new system of procedures, especially in an agency as large as the New York City Welfare Department, is not an easy task, and that it necessarily takes time to achieve full and smooth operation. Moreover, we are confident that the agency will make every

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[42] See NLRB v. Donnelly Garment Co., 330 U. S. 219, 236-37 (1947): "We find no warrant for imposing upon administrative agencies, a stiffer rule, whereby examiners would be disentitled to sit because they ruled strongly against a party in the first hearing." See also Pangburn v. CAB, 311 F. 2d 349, 356-58 (1st Cir. 1962); 2 K. Davis, Administrative Law Treatise ¶ 12.06, at 169 (1958); W. Gellhorn & C. Byse, Administrative Law 944-45 (4th ed. 1960).

[43] We also assume that a case supervisor who has become too deeply involved in a case conscientiously to undertake an impartial review can and will disqualify himself from that function.

effort in the future to insure that its own regulations and the requirements outlined in this opinion are carefully observed in practice. Finally, we are well aware that proceedings to compel state officials to comply with their statutory or regulatory duties should usually be brought in state courts,[44] and that supervision of a state administrative program is ordinarily an inappropriate role for a three-judge federal court. In view of all of these considerations and the fact that the plaintiffs before us are obtaining an injunction against use of option (b), the procedure which has been applicable to their terminations up to now, we will not now deal with these issues further.

V

With this disposition of the case, it is unnecessary to rule on plaintiffs' remaining statutory argument that by providing two options throughout the state for pre-termination procedure, the state violates the requirement of 42 U. S. C. § 602 (a) (1), that its plan, in effect, be uniform in the state. Apparently, defendants do not press before us various other arguments originally made before Judge Bryan, such as plaintiffs' need to exhaust available remedies administratively, or that the case is moot because most plaintiffs are now receiving public assistance on an emergency basis, or that a three-judge court is inappropriate here. Judge Bryan properly rejected these arguments in his opinion convening the three-judge court. F. Supp. at .

As to the first argument, see King v. Smith, 392 U. S. 309, 312 n.4 (1968). As to the second argument, the

[44] For instance, in an Article 78 proceeding in New York, N. Y. C. P. L. R. §§ 7801-06.

only development since Judge Bryan's decision is that some of these plaintiffs have received their post-termination state fair hearings. However, that this right was finally accorded to them months after their complaint was filed and after termination of benefits does not dispose of the case. Other plaintiffs are still threatened with termination without a proper hearing, and if we were required to do so, we would regard this as a class action, as plaintiffs request, as was done in Wheeler v. Montgomery, No. 48303 (N. D. Cal. April 17, 1968), appeal docketed, 37 U. S. L. W. 3152 (U. S. Oct. 22, 1968) (No. 634), relied on by defendants. Finally, Judge Bryan properly convened the three-judge court. The complaint obviously raised substantial constitutional issues. In addition, while option (b) may thus far have actually been in effect only in New York City, any or all local agencies could adopt it; it is thus validly a regulation of "general and state wide application". Moody v. Flowers, 387 U. S. 97, 101 (1967).

Finally, we emphasize again that we deal here only with procedural rights, not with whether a particular recipient of welfare is entitled to receive it. We are most aware that abuses of the welfare system do exist, and we do not minimize the need to keep welfare expense within manageable bounds. We do not suggest that welfare payments should be made to anyone not entitled to receive them. We hold only that a welfare recipient is entitled to certain minimum procedural protections before his payments are cut off or diminished. Providing those protections will, of course, help to insure fair individual treatment. In addition, it will have the more subtle, but equally important, effect of demonstrating that

fair procedures are available, thus protecting the rule of law in society, a not insignificant result.[45]

To sum up: We hold that a pre-termination hearing for welfare recipients is constitutionally required and that the procedures set forth above for such hearing are the constitutional minimum. Accordingly, we deny defendants' motion for summary judgment; we grant plaintiffs' motion for a preliminary injunction as to the operation of option (b), and deny it as to option (a), for the reasons and on the conditions stated herein. In addition, nothing herein is meant to affect the right to a post-termination hearing in accordance with the procedures already in existence. Plaintiffs also moved to dissolve an order of Judge Bryan's staying discovery pending disposition of the motions in chief. Since that discovery was primarily designed to prove that the various hearing procedures, even if constitutional on their face, were unconstitutional in their application, for the reasons already set forth we deny it. Plaintiffs' motion to amend the complaint in the consolidated case is granted, as is the motion of the twelve intervenors to intervene.

Settle order on notice; if defendants desire a stay pending appellate review, their proposed order should so provide.

WILFRED FEINBERG,
U. S. C. J.

FREDERICK P. BRYAN
U. S. D. J.

EDWARD C. MCLEAN
U. S. D. J.

Dated: New York, N. Y.
November 26, 1968

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[45] See E. Wickenden, Administration of Welfare Rights, in National Conference on Law and Poverty, Proceedings 31, 36-37 (1965).

APPENDIX C

Regulation Involved

STATE DEPARTMENT OF SOCIAL SERVICES

Albany, New York

Pursuant to the provisions of sections 20 and 34 of the Social Services Law, I, George K. Wyman, Commissioner of Social Services, do hereby amend in part, as hereinafter indicated, Part 351 of Article 1 of Subchapter B of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective immediately upon filing with the Secretary of State.

Section 351.26 is hereby Repealed and a new section to be section 351.26 is hereby added to read as follows:

351.26. Proposed discontinuance or suspension of grant; prior notice to recipient; additional local review and subsequent determination. When a social services official purposes to discontinue or suspend a grant of public assistance he shall proceed in accordance with the provisions of either subdivision (a) or (b) below:

(a) He shall notify the recipient in writing of his intention to discontinue or suspend the grant at least seven days prior to the proposed effective date of the discontinuance or suspension, together with the reasons for his intended action, unless such discontinuance or suspension is in response to the request of the recipient or is due to; the death of the recipient who is an unattached person; the recipient's admission to an institution wherein his assistance may not be continued; the recipient's whereabouts being unknown to the social services official because the recipient moved from his last known address without notifying the social services official and without leaving a forwarding address; the recipient's moving from the

state and establishing his permanent home elsewhere; the recipient's case having been reclassified as to category. Such notification shall further advise the recipient that if he makes a request therefor he will be afforded an opportunity to appear at the time and place indicated in the notice before the person identified therein who will review his case with him and will afford him opportunity to present such written and oral relavent evidence and reasons as the recipient may have to demonstrate why his grant should not be discontinued or suspended, and that the recipient may appear and present such evidence and reasons on his behalf with or without the assistance of an attorney or other representative. Only the social services official or an employee of his social services department who occupies a position superior to that of the supervisor who approved the proposed discontinuance or suspension shall be designated to make such a review. When a recipient requests such a review the designated person shall, at the time and place indicated in the notice to the recipient, review with the recipient and his representative, if any, the evidence and reasons supporting the proposed action and shall thereupon afford the recipient opportunity to present relevant evidence and to state reasons why the proposed discontinuance or suspension should not be made. When such a review has been made by a designated employee, such employee shall promptly make an appropriate written recommendation to the social services official, together with his reasons therefor, including reference to applicable provisions of law, Board rules, Department regulations, and approved local policy. After such a review the social services official shall expeditiously determine whether the proposed discontinuance or suspension shall or shall not be made effective as proposed, after considering all the evidence before him

and the recommendation, if any of the employee designated by him to review the proposed action with the recipient. The social services official shall then promptly send an appropriate written notice of his decision to the recipient and his representative, if any, and to the Department's area office. Assistance shall not be discontinued or suspended prior to the date such notice of decision is sent to the recipient and his representative, if any, or prior to the proposed effective date of discontinuance or suspension, whichever occurs later.

(b) A social services official may adopt a local procedure concerning discontinuance or suspension of grants of public assistance and submit to the Department such procedure for its approval. Upon approval such local procedure shall become effective. Such local procedure must include the following:

(1) Notice to the recipient of proposed discontinuance or suspension of the grant at least seven days prior to the proposed effective date of the discontinuance or suspension, together with the reasons for the intended action, unless such discontinuance or suspension is in response to the request of the recipient or is due to: the death of the recipient who is an unattached person; the recipient's admission to an institution wherein his assistance may not be continued; the recipient's whereabouts being unknown to the social services official because the recipient moved from his last known address without notifying the social services official and without leaving a forwarding address; the recipient's moving from the state and establishing his permanent home elsewhere; the recipient's case having been reclassified as to category.

(2) The notice must advise the recipient that, if he so requests, the proposed discontinuance or suspension will be reviewed and he may submit in writing a statement or

other evidence to demonstrate why his grant should not be discontinued or suspended.

(3) A review of the proposed discontinuance or suspension shall be made by the social services official or an employee of his social services department who occupies a position superior to that of the supervisor who approved the proposed discontinuance or suspension.

(4) After review of the relevant materials in the recipient's file including any written material submitted by him the decision shall be made expeditiously as to whether the proposed discontinuance or suspension shall or shall not be made effective as proposed. Appropriate written notice of the decision shall be sent to the recipient and to the Department's area office. Assistance shall not be discontinued or suspended prior to the date such notice of decision is sent to the recipient and his representative, if any, or prior to the proposed effective date of discontinuance or suspension, whichever occurs later.

Date: April 26, 1968

Signed: GEORGE K. WYMAN
Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on April 26, 1968, amending in part, Section 351.26 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18, NYCRR.

Date: April 26, 1968

Signed: GEORGE K. WYMAN
Commissioner

APPENDIX D

Exhibit 1 to Commissioner Goldberg's Affidavit of June 14, 1968—Procedure No. 68-18

THE CITY OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

Subject: Clients' Right of Review in Cases of Proposed Suspension or Discontinuance of Assistance

To: Administrative Group Case Unit

Procedure No. 68-18 May 21, 1968
Classification 34 Replaces: P 68-15 (34)

Distribution: C Effective: Immediately

I. INTRODUCTION

A. *Purpose*: With the approval of the State Department of Social Services this procedure implements the new State policy which insures that the clients' rights are protected in cases where it is proposed that assistance be suspended or discontinued. This new policy in no way limits the client's right to request a Fair Hearing, in accordance with existing policy, and requires that assistance be continued until completion of the administrative review.

B. *Program*:

1. The State Department of Social Services has promulgated a new regulation which assures the client of the opportunity for a Department review by an employee who occupies a position superior to that of the employee who approved the proposed discontinuance or suspension of assistance. For purposes of this procedure, this employee shall be defined as the Review Officer.

2. In situations, *other than those listed below,* notification must be sent to the client of the intent to suspend or discontinue assistance seven (7) calendar days prior to the planned effective date of such action.

a. death of unattached person

b. admitted to institution (mental, penal, correctional, etc.)

c. client's request for discontinuance of assistance

d. client's whereabouts unknown and there is no forwarding address

e. client has left the State permanently

f. reclassification as to category

3. Upon receipt of information that the client requests an administrative review, the case shall be forwarded to the Review Officer along with all written material submitted by the client.

4. The Review Officer shall promptly review the case record, the recommendations of the Case Unit and the written material, if any, submitted by the client with his request for a review.

5. Immediately after such review, the Review Officer shall make an appropriate written determination as to whether or not assistance shall be discontinued, detailing the relevant facts and including all evidence submitted at the time of the review, as well as any reference to applicable provisions of the Social Services Law, Rules of the State Board of Social Welfare and Regulations of the State Department of Social Services, and approved local policy.

6. Based on the determination of the Review Officer, the Case Unit shall take appropriate action (to close or continue assistance) and notify the client of the determination by means of the appropriate letter.

C. *Forms Used*	*Title*	*Origin*
M-3c (New) 5/13/68	Notice of Intent to Suspend or Discontinue Assistance	Case Unit
M-3d (New) 5/13/68	Notice of Decision after Review to Continue Public Assistance	Case Unit
M-3h (Rev. 5/13/68)	Notice of Discontinuance of Public Assistance	Case Unit
M-3e (New) 5/13/68	Decision after Review to Discontinue Public Assistance	Case Unit

II. DETAILED INSTRUCTIONS

Caseworker

1. Records, in detail, discussion with the client and the reasons for the proposed suspension or discontinuance of assistance, including the appropriate closing code.

Caseworker

2. Prepares Form M-3c, "Notice of Intent to Suspend or Discontinue Assistance", in triplicate (two copies to be sent to the client and one copy to be retained in case record). Makes appropriate case record entry.

Note: On Form M-3c, the dates entered in Paragraphs 1 and 2 shall be identical.

Caseworker

3. Forwards case record and all copies of Form M-3c, together with a return envelope identified with caseload number, to Unit Supervisor.

Unit Supervisor

4. Reviews case record and Form M-3c. If in agreement, signs case record entry and Form M-3c. Arranges for immediate mailing of two copies to the client and retains one copy in case record. Controls Forms M-3c and date of their return on separate Form W-708, headed "Proposed Suspension or Discontinuance of Assistance".

Unit Supervisor

5. Reviews Form W-708 daily. If client fails to respond to Form M-3c, within the seven days provided or indicates agreement to have his case closed, instructs Caseworker to prepare the necessary forms for closing action in accordance with current procedure, using Form M-3h.

Unit Supervisor

6. If the client requests a review, makes appropriate entry on Form W-708; immediately forwards the case record with any written documents, relevant to the proposed action, submitted by the client, to the Review Officer.

Note: The Case Unit is responsible for all service to the client pending the review and receipt of the determination from the Review Officer either to close the case or continue assistance.

Review Officer

7. Immediately reviews the case record and written material, if any, submitted by the client, and prepares a memorandum, setting forth the relevant facts and his determination to continue or discontinue assistance, including any reference to applicable provisions of the Social Services Law, Rules of the State Board of Social Welfare and Regulations of the State Department of Social Services (see Appendix), and approved local policy.

a. If the determination is that assistance shall be continued, prepares the memorandum, in triplicate. Forwards original copy of memorandum with case record to the appropriate Case Unit; forwards duplicate copy of the memorandum to Center Director; retains third copy for own file.

b. If the determination is that assistance shall be discontinued or suspended, prepares memorandum, in quintuplicate. Retains one copy for own file; forwards original copy of memorandum with case record to the appropriate Case Unit; forwards three copies to the Director's office where one copy shall be retained in file, and two copies forwarded to the Fair Hearings Section, Central Office, one for the Commissioner's file and one for the State Area Office.

Unit Supervisor

8. On receipt of determination of the Review Officer, makes appropriate entry on Form W-708. Forwards case record and all material to the Caseworker for appropriate action and controls to insure prompt action.

Caseworker.

9. Takes appropriate action to continue or discontinue assistance; prepares appropriate letter to client with a copy to his attorney or representative, if any, and one copy to be retained in case record; makes case entry detailing action takes; prepares required forms to carry out appropriate action in accordance with current procedure.

LEGAL BASIS FOR CLOSING CASE

State Department Regulation 351.26 requires that after the review, the reviewing officer's decision shall include reference to applicable provisions of law, rules of the State Board of Social Welfare, regulations of the State Department of Social Services and approved local policy.

The Social Services Law, Board of Rules and Department regulations give the Commissioner authority upon completion of an investigation to suspend, increase, decrease or revoke a grant in cases where such action is based on the element of need, as follows:

SOCIAL SERVICES LAW

Section 134—"Such person shall be visited. . . ., in order that assistance or care may be given only in such amount and as long as is necessary. . . . " (All categories)

Section 214 (OAA)—" . . . the amount and manner of giving assistance may be changed or the assistance may be withdrawn if such official finds that the recipient's circumstances have changed sufficiently to warrant such action. It shall be within the power of the social services official at any time to cancel and revoke assistance for cause, as he may deem proper, . . . "

Section 286(2) (AB)—"The amount and nature of the assistance and the manner of providing it shall be determined by the social services official with due regard to the conditions existing in each case and in accordance with the regulations of the Department."

Section 303, subdivision (2) (AD)—"The amount and nature of the aid and the manner of providing it shall be determined by the social services officials with due regard to the conditions existing in the case in accordance with the provisions of this title, or other provisions of this chapter, the rules of the board and the regulations of the Department."

Section 350, subdivision 2 (ADC)—"allowances (a) shall not be granted for a period of longer than that prescribed by the rules of the board and regulations of the Department, subject to renewal from time to time.

(b) May be increased, decreased or revoked at any time."

Section 365a (MA)—"The amount, nature and manner of providing medical assistance for needy persons shall be determined by the social services officials. . . . in accordance with the local medical plan, the provision of the title (11), the rules of the board and regulations of the Department."

BOARD RULE

82.1(a)(1)—"Public assistance and care shall be granted only so long, and in such form and amount, as is necessitated by the needs of the recipient in the light of his resources." (All categories)

STATE DEPARTMENT REGULATIONS

351.22(c)—"When an agency verifies ineligibility or a change in degree of need, action shall be taken immediately

to reduce, increase, or discontinue the grant for the next payment period possible under existing payment procedure." (All categories)

For those closings where there is ineligibility for reasons other than need, in addition to the foregoing, the following references to law, rule or regulation may be included:

Closing Codes		
40-47	Social Services Law 285 State Department Regulation 368.2(i)	AB
	Social Services Law 302 State Department Regulation 368.2(j)	AD
	Social Services Law 349 Board Rule 80.1 State Department Regulations 369.2, 369.3 "Policies Governing the Administration of Public Assistance", Section 32	ADC and T-ADC
48 and 49	Social Services Law 131 (4) State Department Regulations 351.3 and 369.2 (7)	
50	Social Services Law 131 (4) State Department Regulations 251.3 and 368.2	
53	Social Services Law 321, 360 State Department Regulation 352.8 "Policies Governing the Administration of Public Assistance", Chapter VI	

Appendix D—Exhibit 1 to Comm. Goldberg's Affidavit

Closing Codes	
54	Social Services Law 134a State Department Regulation 351.7
55	State Department Regulation 351.2 "Policies Governing the Administration of Public Assistance", Section 165
57	Social Services Law 131 (5b), 350b State Department Regulations 351.3, 369.2(7)
58	State Department Regulation 351.1
59	Social Services Law 352 State Department Regulation 369.1 (b)
99	Contact Legal Division
56	Where there is a continuing need, there is no legal basis for closing a case for misuse of funds. State Department Regulation 352.5 (n) (1) provides for duplication of a grant in whole or part when the original check or proceeds were allegedly lost, stolen, or diverted to other purposes, when the health and safety of the recipient would be threatened by a failure to replace. Consideration should be given to restriction of a grant, or transfer to some other form of assistance or care.

Appendix D—Exhibit 1 to Comm. Goldberg's Affidavit

(Emblem)

(Letterhead of)

THE CITY OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

NOTICE OF INTENT TO SUSPEND OR DISCONTINUE PUBLIC ASSISTANCE

Case Number

This is to advise you that this Department intends to ☐ Suspend ☐ Discontinue your public assistance grant , for the following reasons:

If you feel that your public assistance grant should not be suspended or discontinued, you may request a review of your record by a Review Officer on or before .

You may also submit any statement or document which may establish your need for public assistance. You have the right to submit this written material through an attorney or any representative of your choosing.

If you wish a review, please mark an X in Box No. 1, below. If you do not wish a review, please mark an X in Box No. 2, below. If you fail to reply, we will assume that you agree with the action the Department proposes to take.

Box No. 1: ☐ I request a Review

Box No. 2: ☐ I do not request a Review

Appendix D—Exhibit 1 to Comm. Goldberg's Affidavit

Please return a copy of this letter in the enclosed self-addressed envelope and keep the other copy of this letter for your records.

If, after this review, you are still dissatisfied with the decision given you, you may request a Fair Hearing, in writing or orally, by communicating with the State Department of Social Services at 270 Broadway, New York, N. Y. 10007, Telephone Number 488-6550.

[Here follows a Spanish Translation of the same]

(Emblem)

(Letterhead of)

THE CITY OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

NOTICE OF DECISION, AFTER REVIEW,
TO CONTINUE PUBLIC ASSISTANCE

After careful consideration of all the factors and documents you presented, we are in agreement that you are still eligible to receive public assistance.

Please inform your Caseworker of any change in your circumstances that affects your need for assistance.

[Here follows a Spanish Translation of the same]

Appendix D—Exhibit 1 to Comm. Goldberg's Affidavit

(Emblem)

(Letterhead of)

THE CITY OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

NOTICE OF DISCONTINUANCE OF PUBLIC ASSISTANCE

(Prepare in Duplicate)

Our investigation shows that effective immediately you are not eligible to receive _____ for the following reasons:

You may wish to review the pamphlet which was given to you at the time of your application. It explains the provisions under which this type of public assistance is granted and your rights with respect to review of this decision.

If you are dissatisfied with this decision you may request a Fair Hearing, in writing or orally, by communicating with the State Department of Social Services, 270 Broadway, New York, N. Y. 10007, Telephone Number 488-6550.

You will soon receive information concerning your eligibility for continued assistance under the Medical Assistance Program as provided by the New York State Medicaid Program.

[Here follows a Spanish Translation of the same]

Appendix D—Exhibit 1 to Comm. Goldberg's Affidavit

(Emblem)

(Letterhead of)

THE CITY OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

NOTICE OF DECISION, AFTER REVIEW, TO DISCONTINUE PUBLIC ASSISTANCE

Case Number

After careful consideration by a Review Officer of all the factors and documents you presented, it has been decided that effective immediately you are not eligible to receive _____ for the following reasons:

You may wish to review the pamphlet which was given to you at the time of your application. It explains the provisions under which this type of public assistance is granted and your rights with respect to review of this decision.

If you are dissatisfied with this decision you may request a Fair Hearing, in writing or orally, by communicating with the State Department of Social Services, 270 Broadway, New York, N. Y. 10007, Telephone Number 488-6550.

You will soon receive information concerning your eligibility for continued assistance under the Medical Assistance Program as provided by the New York State Medicaid Program.

[Here follows a Spanish Translation of the same]